

## REMARKS

This Response addresses the issues set forth in the Office Action dated June 2, 2005. Applicants are especially grateful for the careful consideration that Examiner Ciric has given to this application and for the helpful suggestions made for improving the claims.

In this response Applicants have amended claims 21, 22, 26, 27, 32, 33, 34, 35 and 36 have been amended, essentially to address issues of indefiniteness and/or to adopt suggestions of the Examiner. Also, new claims 37-40 have been added, which are believed readable on the elected species. Following entry of these amendments, claims 21-40 are pending in the application. Claims 21, 33 and 35 are generic to species 1, 3, 4 and 5, and claims 34, and 36-40 are believed generic to all species. Claim 23 has been withdrawn by the PTO; however, Applicants respectfully request reconsideration (and/or this issue becomes moot if parent claim 21 is found allowable).

Reconsideration of the present application is respectfully requested in view of the foregoing amendments and the remarks which follow.

### **Objections to the Claims**

On pages 2 and 3 of the Office Action, the PTO has objected to certain of the claims for various minor informalities. In this response, Applicants have amended claims 27 and 34 to address the PTO's objections and, in claim 34, to delete an extraneous word. Although claim 36 was listed in the Office Action, no specific objection was noted with regard to this claim. Applicants have amended both claims 35 and 36 to conform the Markush language to conventional format, i.e., by using "and" instead of "or." Applicants thank Examiner Ciric for the constructive suggestions.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding objections to the claims.

### **Rejections Under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph**

On pages 3-5 of the Office Action, the PTO has rejected claims 21-36 under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as allegedly being indefinite. Applicants have amended the claims to

address most of the grounds of rejection and request reconsideration of certain other of these rejections based on the reasons set forth below.

Claim 21 has been amended to remove any doubt that the “front” and “rear interior zones” are located in the respective “front” and “rear internal vehicle compartments.”

Claims 21, 33 and 34 have all been similarly amended to make it very clear that the (now) third heat exchanger is operably integrated “in the additional housing.”

In response to the “incompleteness” rejection on page 5 of the Office Action, each of the independent claims has also been amended to recite “a first” and “a second” heat exchanger in the conditioning housing. The previously defined “second heat exchanger” in the additional housing has now been denominated as a “third heat exchanger.”

Applicants respectfully request reconsideration of the rejection based on the terminology “said air outlet opening being in parallel air flow relationship with said first heat exchanger” that is found in independent claims 21, 33 and 34. This language is well understood by persons skilled in the art, and the structural relationship defined by this language is illustrated very clearly in the present application, e.g., in each of Figures 1-6 of the drawings. As may be seen in, e.g., Figure 1, two alternative pathways (parallel pathways) exist for air entering into housing 1. The first pathway is through the (“first”) heat exchanger 4, and the second pathway bypasses the heat exchanger 4. The air outlet opening 13 is in communication with and forms part of the second or bypass pathway, i.e., it presents an alternative, pneumatically parallel pathway for air.

Applicants therefore submit that there is no ambiguity with respect to this claim language and that persons skilled in the art fully understand the structural relationship that is necessary for creating such a parallel flow relationship. Withdrawal of this ground of rejection is respectfully requested. If the PTO persists in this ground of rejection, Applicants respectfully request an explanation of the nature in which the claimed relationship is indefinite and/or the nature of the difficulty in ascertaining the scope of the claims.

Applicants also respectfully request reconsideration of the rejection of claims 21, 24, 27, 28, 29, 33 and 34 based on the alleged lack of antecedent basis, as set forth in the first two

paragraphs on page 4 of the Office Action. This ground or basis for rejection is believed to be based upon an incorrect interpretation of the rule of “antecedent basis” and also on a failure to properly comprehend the structure of Applicants’ claims.

First, the requirement for “antecedent basis” is simply for the purpose of preventing confusion in the claim language with regard to whether the words following the direct object “the” appear previously in the claim, i.e., if they do not, then the question is raised as to whether a new element is being *implicitly* claimed. In the present claims, there is not doubt that the language, in each instance, appears previously in the claim, and thus the rule of antecedent basis is clearly satisfied for each claim.

It appears that the PTO is using the “antecedent basis” rule to address a completely different (and incorrect) issue, namely, the issue of whether the claims are attempting to claim the presence of two *alternative* parts at the same time. The claims clearly do not do so. In each instance the claim language unambiguously states that the “connecting structure” is for “selectively and alternately attaching” one of the two additional members (i) and (ii). The portion of the claim to which the PTO points, in each instance, does not, by its own wording, attempt to recite the presence of both alternate additional members at the same time. Further, it is likewise not indefinite or unclear in each of dependent claims 24, 27, 28, 29 and/or 32 to refer back to one of the two alternately attachable members.

Finally, this basis for rejection fails to appreciate the nature of the claims. As explained previously, the connecting section of the conditioning housing possesses certain structure that permits two or more different covering structures to be alternatively connected to the conditioning housing, i.e., either cover 18 (as shown in Fig. 2) or additional housing 10 (as shown in Figs. 1 and 4). Claims 21 and 33 recite the connecting structure that cooperates with the respective attachment parts in order to alternately connect them. Thus, the reference to the alternatively connectable additional members serves as a part of the definition of the connecting structure that is a part of the claimed conditioning housing. There are multiple flange portions 14, some of which cooperate to connect the cover 18, some of which cooperate to connect the additional housing 10, and one portion of flanges 14 serves, in part, to connect both cover 18 and additional housing 10, i.e., the flange 14 depicted at the bottom

of Figs. 1, 2 and 4, beneath air outlet opening 13. Thus, in the case of claims 21 and 33, the claims cover multiple, alternative structures (i.e., species), which in each case share a common connecting section on the conditioning housing that is designed to connect to both attachment parts. The fact that this claimed structure is defined, in part, based on its ability to attach two different types of additional member (selectively and alternatively) does not render the claims indefinite.

In the case of independent claim 34, the claim is directed only to the conditioning housing (rather than to the entire system), and this claim is worded so as to make it clear that the cover and the additional housing are not positively claimed elements, but rather serve only to define the nature of the claimed “connecting structure” that is found on the connecting section of the conditioning housing. The rejection applied to this claim (bottom of page 4 of the Office Action) is based on the allegation that claim 34 is rendered indefinite by virtue of the fact that the preamble refers only to a “housing” whereas other elements are included in the claim as positively recited elements, including allegedly one of the first and second additional members. As noted, Applicants disagree that either of the additional members is included as a positively recited element of claim 34. With regard to the matter of positively reciting other elements in association with the housing, claim 34 has been amended in the preamble to recite a “conditioning housing assembly.”

Claim 32 has been reworded to address the issue raised in the Office Action. The scope of the claim has not been changed.

Finally, Applicants also respectfully request reconsideration of the rejection of claims 35 and 36. It is not understood how or in what sense the recitation of three alternative types of connecting structure in these claims, when considered in light of the two alternative “additional members” recited in the parent claims, renders these claims “indefinite.” What is indefinite about the fact that either of two parts can be attached to the housing in one of three possible attachment modes? The PTO is kindly requested to explain how this definition could be considered indefinite by a person skilled in the art, if this rejection is to be repeated.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections under 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

**New Claims 37-40**

New claims 37-39 present alternative claim definition of essentially the subject matter of existing claim 27, except that the focus is on the location of the connecting structure. Support for these claims is found, e.g., in Figure 1. One portion of connecting flange 14 is located near the bottom of Figure 1, at the periphery of the air outlet opening 13, whereas another portion of the connecting flange 14 is shown near the top of the additional housing 10. This structure is common to all of the disclosed embodiments.

The flanges 14 on the connecting section are the preferred connecting structure for connecting these alternative parts. As described in the specification, the cover 18 preferably has a portion that “plugs-in” to the air outlet opening 13 that is surrounded by the flanges 14, i.e., those flanges shown both at the top and at the bottom in Fig. 2. Alternatively, for the additional housing 10, it can be seen that the opening to be attached to the connecting section is much larger than the opening of the air outlet opening 13, and in this case additional flange members 14 are provided near the top of the additional housing 10. In this case, the specification states (in paragraph [0015] on page 7) that “the connecting section and the rear temperature-control unit are provided with flange members which correspond to one another and can be fitted together . . . [and as] a result, the rear temperature control unit can be securely position and centered . . . [and t]ight, leak-proof attachment . . . is therefore ensured with interposition of suitable sealing means.”

Claim 40 is directed to the order to the heat exchangers illustrated in Figure 1.

**Rejections Under 35 U.S.C. §102**

On page 5 of the Office Action, the PTO has rejected claims 21, 22, 24, 27-29 and 32-36 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 6,422,301 to Scoccia et al. (hereafter “Scoccia”). For the reasons set forth below, Applicants respectfully traverse this rejection.

As noted in the Office Action, the earliest effective prior art date for Scoccia, under 35 U.S.C. § 102(e), is August 14, 2000. This date is subsequent to the priority date (August 1, 2000) claimed in the present application. Although Applicants do not agree with or acquiesce

in the stated rejection, they chose, for the sake of simplicity, to submit herewith a sworn English translation of their priority application, in order to remove Scoccia as prior art in this case. As can be seen, the drawings filed in the present application are essentially identical with those of the German priority document, and the description of the invention illustrated in those drawings is essentially the same in the respective U.S. and German priority applications. Thus, the claims of the present application find support in the substantially identical disclosure of the German priority application and are therefore entitled to the right of priority based thereon.

Withdrawal of the rejection based on Scoccia is therefore respectfully requested.

On page 6 of the Office Action, the PTO has rejected claims 21, 22, 24-26, 28, 29, 31 and 34 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 6,453,991 to Tsurushima et al. (hereafter "Tsurushima '991"). For the reasons set forth below, Applicants respectfully traverse this rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP §2131.

Here, Tsurushima fails to disclose a "connecting structure, associated with at least said connecting portion of said conditioning housing, for selectively and alternately attaching each of said additional members (i) and (ii) to said connecting section" as recited in independent claims 21 and 33. Accordingly, Applicants submit that Tsurushima '991 cannot properly anticipate claims 21 or 33 or the claims which ultimately depend therefrom. Independent claim 34 contains an essentially similar claimed feature, and is therefore also not anticipated.

As the PTO apparently realizes, Tsurushima fails entirely to teach a structure in which either a releasable cover or a rear vehicle compartment temperature control unit can be selectively connected to cover an air outlet opening in a conditioning housing, i.e., employing the claimed "connecting structure" that is part of the connecting section of the conditioning

housing. The alleged “opening” (apparently, at the parting seam of the two casing halves C1 and C2) in Tsurushima is not an “air outlet opening” *in the housing* and is not in a parallel flow relationship with either of the heat exchangers positioned in the housing/casing. Further, casing half C2 does not represent a selectively and alternately attachable “additional member” (it is part of the housing) nor does it contain a “third” heat exchanger. Most significantly, there is neither a disclosure of nor a possibility of “connecting structure” that is sufficient for selectively and alternately attaching any two different kinds of “additional members,” let alone the two additional members defined in the independent claims.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under §102 based on Tsurushima ‘991.

Applicants also request reconsideration of the rejection of claim 30 as being unpatentable over Tsurushima ‘991 in view of Umebayahi, based on obviousness under 35 U.S.C. § 103. Claim 30 is believed to be allowable at least for the reasons set forth above with regard to parent claim 21. Under § 103, the failure of the principal reference to teach or suggest the improvement of the invention is an even more important criterion demonstrating patentability. Further, incorporating a PTC heater in the primary reference does not overcome the deficiencies of Tsurushima ‘991, discussed above. Withdrawal of this rejection is respectfully requested.

Finally, with regard to the withdrawal of claim 23, Applicants respectfully request reconsideration, in view of the fact that the elected embodiment of Figure 1 contains at least air outlet 17 that guides air to the rear vehicle passenger compartment. See paragraph [0023] of the specification, at the top of page 10. Further, as noted above, allowance of claim 21 will render this issue moot.

### CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that all of the pending claims are now in condition for allowance. If there are any questions regarding the application or minor changes that are needed to expedite bringing the application into condition for allowance, Examiner Ciric is courteously invited to contact the undersigned at the number below.

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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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